

ROBERT D. BUYAN

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UNIGM-008

**Via Email**

October 25, 2023

Andrea McMillen, Staff Services Manager  
Yolanda Morrow, Director  
California Department of Justice  
Bureau of Gambling Control  
P.O. BOX 168024  
Sacramento, CA 95816-8024

**Re: Blackjack-Style Games Regulations-Draft Concept Language**

Dear Ms. McMillen and Director Morrow:

My firm represents Steven K. Wright and his companies TXB Industries, LLC and United Gaming, LLC (collectively referred to below as “Mr. Wright”) in relation to intellectual property matters. I write in response to Director Morrow’s notice of September 11, 2023 (“Notice”) and the accompanying Draft Concept Language to promulgate regulations concerning blackjack-style games and rotation of the player-dealer position at California cardrooms.

This letter specifically addresses the impropriety of Sections 2073(c) and 2074(b) of the Draft Concept Language which, if enacted, would bar ongoing play of previously approved games having names that include either the number 21 or the word “blackjack.”

It is to be noted, however, that Mr. Wright’s objections are not limited to only proposed Sections 2073(c) and 2074(b). Other provisions of the Draft Concept Language also affect Mr. Wright’s business and may be addressed in separate submission(s) by or on behalf of Mr. Wright. Specifically, Mr. Wright also objects to proposed Section 2075(b)(1- 6) on grounds that such language lacks any basis in fact and should be stricken from the proposed regulation.

**1. Background**

Mr. Wright is the creator of the game known as PURE BLACKJACK or PURE 21.5 BLACKJACK, which has been approved by the Bureau of Gambling Control (“Bureau”) since at least 2006. Through his companies, Mr. Wright has licensed numerous California cardrooms for play of this game and derives an ongoing stream of income from this business.

Mr. Wright has actively used his PURE BLACKJACK and PURE 21.5 BLACKJACK trademarks since 2006 and is the owner of United States Trademark Registration No. 3743782 for the mark PURE BLACKJACK, which has attained incontestable status under 15 U.S.C. §1065 and has been renewed to remain in effect until 2030. He also owns and uses the following word/design logo trademark: ([https://oag.ca.gov/sites/all/files/agweb/pdfs/gambling/BGC\\_pure\\_redflex\\_blackjack.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/gambling/BGC_pure_redflex_blackjack.pdf))



If enacted, Sections 2073(c) and 2074(b) of the Draft Concept Language would require Mr. Wright to discontinue all use of his long-standing and valuable trademarks. This would severely disrupt Mr. Wright's business and would constitute a "taking" of Mr. Wright's valuable trademark rights, without compensation and in the absence of any rational justification.

**2. Mr. Wright's Trademarks Have Been Approved by the DOJ and Lawfully Used for More Than 17 Years**

Mr. Wright's current game, and its name, have been approved by the California Department of Justice, Bureau of Gambling Control since June of 2006. Mr. Wright's above-described trademarks have been used continually since that time. Over the years, Mr. Wright and his licensees have invested substantial sums in advertising and promotion of the game. Moreover, they have designed, produced and continually used various game-associated articles which are imprinted with Mr. Wright's above-described trademarks, such as table felts, signs, special (proprietary) playing cards, informational publications, etc.

**3. Mr. Wright's Trademarks are Valuable Business Assets**

Mr. Wright's above-described trademarks and their associated goodwill (or "brand value") constitute business assets that can be sold, transferred, and licensed. The value of these business assets is determined by a number of factors, including the commercial strength of the trademarks. The commercial strength of Mr. Wright's trademarks is the result of strong consumer recognition and loyal consumer following that has been built up over the past 17 years. During that time, Mr. Wright's trademarks have acquired valuable commercial strength through diligent and lawful sales, advertising, promotion, trademark policing and licensing activities. Thus, much of the value of Mr. Wright's business resides in the goodwill and commercial strength that his trademarks have acquired over many years of fully approved and lawful use.

**4. Prohibiting Use of Mr. Wright's Long-Standing Trademarks Would Cause Substantial Economic Injury, Loss of Income and Undue Personal Hardship**

If enacted, proposed Sections 2073(c) and Section 2074(b) will require Mr. Wright and his licensees to stop using Mr. Wright's long-standing trademarks and all play of the Pure 21.5 Blackjack game in California

cardrooms will cease. The entire value of Mr. Wright's trademarks will be irretrievably lost and his loyal consumer following will be disrupted. All current inventory of game-associated articles such as table felts, signs, special (proprietary) playing cards, informational publications, etc., will be rendered worthless, and the stream of income that Mr. Wright and his licensee's receive from the Pure 21.5 Blackjack game will end.

**5. Rebranding and/or Recreating Mr. Wright's Proprietary Game, If Possible, Would be Costly and Unlikely to Avoid Loss of Loyal Consumer Following**

Selecting, designing, screening, obtaining the Bureau's approval for, registering and adopting a new trademark is, in itself, a time consuming and expensive process. To be successful, adoption of a new alternative name for Mr. Wright's game would necessitate a complete rebranding process. This would entail a multifaceted marketing strategy, design of new logo(s), design and production of new game-associated articles and supplies such as table felts, signs, special (proprietary) decks of playing cards, informational publications describing the game, etc. and targeted promotion and advertising aimed at rekindling brand identity in the minds of the relevant consumers, investors, competitors, and other stakeholders. Such rebranding process would be costly and time consuming.

Even if Mr. Wright's game could be rebranded and continued in its present form, there would be no assurance that he could or would ever regain all of the goodwill and commercial strength that his existing trademarks currently enjoy.

Furthermore, as addressed in separate submissions, if the rules of play for Mr. Wright's Pure 21.5 Blackjack game were to be suddenly disapproved, the rebranding process alone would not be a viable strategy. Rather, in addition to re-branding efforts, it would be necessary for Mr. Wright to create and obtain approval for an entirely different alternative game. Even if such an alternative game could be created and approved for play, such would be a costly and laborious effort and the likelihood that any such new game could regain the current game's popularity and following of loyal consumers would be uncertain at best.

**6. The Draft Concept Language, if Enacted, Would Exceed Statutory Rulemaking Authority**

The Notice states that the "Bureau of Gambling Control (Bureau) intends to promulgate regulations governing the approval of blackjack-style games that are offered for play in California gambling establishments." However, as understood, California Business & Professions Code § 19826(f) authorizes the Bureau's to "adopt" only regulations "reasonably related to its functions and duties," which are largely limited to investigation and enforcement. Thus, any new regulation that would bar ongoing play of Mr. Wright's long standing game must be promulgated by The California Gaming Control Commission rather than the Bureau. The Commission, not the Bureau, is empowered by statute to adopt regulations and approve game rules to ensure fairness to the public and compliance with state laws. (Bus. & Prof. Code, §§19840, 19841). However, even the Commission's rulemaking authority is *limited* by Business & Professions Code Section 19842(a), which provides as follows:

- (a) The commission shall not prohibit, on a statewide basis, the play of any game or restrict the manner in which any game is played, **unless the commission, in a proceeding pursuant to this article, finds that the game, or the manner in which the game is played, violates a law of the United States, a law of this state, or a local ordinance.** (*emphasis added*) (Bus. & Prof. Code, §§19842(a)).

Without question, enactment of proposed Sections 2073(c) and Section 2074(b) would "prohibit, on a statewide basis, the play of" Mr. Wright's Pure 21.5 Blackjack game. There has been no prior determination

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Yolanda Morrow, Director  
October 25, 2023  
Page 4 of 4

that the name “Pure 21.5 Blackjack” or the game itself violates *any* law of the United States, law of this state, or a local ordinance, as required by Section 19842(a). Nor does the Notice call for any proceeding pursuant to Section 19842(a) prior to any promulgation of the Draft Concept Language. Thus, in the absence of a proceeding and finding in accordance with Business & Professions Code Section 19842(a), any enactment of the Draft Concept Language would exceed the statutory rulemaking authority of the Bureau and/or the Commission.

## 7. Conclusion

For at least the reasons stated above, enactment of Sections 2073(c) and 2074(b) of the Draft Concept Language, or any other regulation barring continued play of Mr. Wright’s Pure 21.5 Blackjack game, would constitute an unwarranted taking of Mr. Wright’s valuable property and would exceed the statutory rulemaking authority of either the Bureau of Gambling Control and/or California Gaming Control Commission absent a finding, in a proceeding pursuant to applicable statute, that the game or the manner in which the game is played violates a law of the United States, a law of this state, or a local ordinance. We are aware of no good faith basis upon which such a finding could be made.

Accordingly, it is respectfully requested that proposed Sections 2073(c) and 2074(b) and all other provisions that would bar ongoing play of the Pure 21.5 Blackjack game, be stricken entirely from the Draft Concept Language.

Very truly yours,  
***STOUT, UXA & BUYAN, LLP***

ROBERT D. BUYAN